IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.976 OF 2005

WITH

CIVIL APPLICATION NO.1150 OF 2005

Anand Dyaneshwar Tad ..Appellant.

Vs.

Municipal Corporation of

Greater Bombay ..Respondent.

...

Mr.G.S.Godbole for the Appellant.

Mrs.Geetanjali Joglekar for the BMC.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

20th December, 2005.

P.C. :

1. This Appeal arises out of an order passed by the Learned Trial Judge in the City Civil Court on 23rd August, 2005 dismissing a Motion for interim relief. The Municipal Corporation issued a

notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 on 28th September, 2002 upon which an order was passed by the Assistant Municipal Commissioner on 7th November, 2002 for the demolition of certain work that has been carried out by the Appellant. The work that is alleged to be unauthorized is an extension to an existing structure with brick masonry walls and ladi coba slab covered with A.C. Sheet roof admeasuring 20’-9" x 50’-9". The Appellant claims an interest in the premises through the original allottee who was one Vijay Mohan Narkar. In response to the notice, the Appellant had relied upon a communication dated 12th August, 1996 issued by MHADA under which the extended work of 75 sq. mtrs came to be regularized. The Appellant in his reply dated 3rd October, 2002 to the show cause notice stated that the structure of the Appellant is situated in a chawl consisting of 10 other structures of similar dimensions which could be verified upon a site inspection. According to the Appellant, the vendor from whom he purchased the premises had constructed an area admeasuring 20’-9" x 50’-9" and that this has been approved by the MHADA authorities on 12th August, 1996. At the

hearing of this Appeal from Order, it has been submitted that MHADA is a local authority within the meaning of Section 2(15)(c)(ii) of the Maharashtra Regional & Town Planning Act, 1966 and the expression 'Planning Authority' is defined in Section 2(19) to inter alia mean a local authority.

2. Learned counsel has submitted that it would have been appropriate for the Appellant to implead MHADA as a party to the suit and considering the material on the record leave has been sought of this Court to move the Trial Court to implead MHADA.

3. In my view, the ends of justice will be met if permission is granted to the Appellant, to move an application before the Learned Trial Judge for impleading the Maharashtra Housing and Area Development Authority as a defendant to the suit. MHADA which has purported to regularize the construction is in any event a proper party. The Municipal Corporation has not filed any reply to the Notice of Motion. Even in these proceedings, time was granted on 24th October, 2005 to the Corporation to file a reply but no reply has been

filed. In this state of the record, this Appeal shall stand disposed of in terms of the following directions :

i) The Appellant is granted liberty to move an appropriate application before the Trial Court for impleading MHADA as a party defendant to the suit. The Appellant states that such an application shall be taken out in any event within a period of one week from today;

ii) The Municipal Corporation is directed to file its reply, if any, to the Motion within a period of four weeks;

iii) In order to facilitate a fresh determination of the Motion, after the impleadment of MHADA and filing of reply by the Municipal Corporation, the impugned order dated 23rd August, 2005 is quashed and set aside. Notice of Motion 4372 of 2002 in L.C. Suit 6223 of 2002 shall stand restored to the file of the City Civil Court;

iv) In the meantime, until the Motion is disposed of, the ad interim relief which held the field during the pendency of the Motion shall continue to operate.

The Appeal is accordingly disposed of. There shall be no order as to costs.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.